

THE HONORABLE JOHN H. CHUN
NOTED FOR: JULY 22, 2022

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SONNY JOYCE, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

AMAZON.COM, INC., ANDREW R. JASSY,
JEFFREY P. BEZOS, BRIAN T. OLSAVKSY,
DAVID A. ZAPOLSKY, and NATE SUTTON,

Defendants.

CLASS ACTION

Case No.: 2:22-cv-00617-JHC

**MOTION OF MENORA MIVTACHIM
INSURANCE LTD., MENORA
MIVTACHIM PENSIONS AND
GEMEL LTD., THE PHOENIX
INSURANCE COMPANY, LTD., AND
THE PHOENIX PROVIDENT
PENSION FUND LTD. FOR
APPOINTMENT AS LEAD
PLAINTIFFS AND APPROVAL OF
SELECTION OF COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

NOTE ON MOTION CALENDAR:
FRIDAY, JULY 22, 2022

MOTION TO APPOINT LEAD PLAINTIFFS & APPROVE
COUNSEL
(CASE NO. 2:22-CV-00617-JHC)

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MOTION

Menora Mivtachim Insurance Ltd. (“Menora Insurance”), Menora Mivtachim Pensions and Gemel Ltd. (“Menora Pensions & Gemel” and, collectively with Menora Insurance, “Menora”), The Phoenix Insurance Company, Ltd. (“Phoenix Insurance”), and The Phoenix Provident Pension Fund Ltd. (“Phoenix Pension” and, collectively with Phoenix Insurance, “Phoenix”), by and through their undersigned counsel, hereby respectfully move this Court pursuant to Section 21D(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for the entry of an Order:

(1) appointing Menora and Phoenix as Lead Plaintiffs in the above-captioned action (the “Action”) on behalf of a class consisting of all persons and entities that purchased or otherwise acquired Amazon.com, Inc. (“Amazon” or the “Company”) stock between February 1, 2019 and April 5, 2022, inclusive (the “Class Period”) (the “Class”)¹; and

(2) approving Menora and Phoenix’s selection of Pomerantz LLP (“Pomerantz”) as Lead Counsel and Badgley Mullins Turner, PLLC (“Badgley Mullins”) as Liaison Counsel for the Class.

In support of their motion, Menora and Phoenix submit herewith the accompanying memorandum of law, the Declaration of Jeremy A. Lieberman (“Lieberman Decl.”), and all exhibits thereto.

¹ On June 28, 2022, a complaint styled *CWA Local 1180 Members' Annuity Fund et al v. Amazon.com Inc. et al*, No. 2:22-cv-00907 (the “CWA Action”) was filed in this Court, alleging substantially the same wrongdoing against the same defendants as the Action, but alleging a longer class period extending from February 1, 2019 through April 28, 2022, inclusive. *See* CWA Action, Dkt. No. 1 ¶ 1. On July 1, 2022, the CWA Action was voluntarily dismissed. *See* CWA Action, Dkt. No. 10. Under the Class Period alleged in the CWA Action, Menora and Phoenix incurred a loss of well above \$75 million in connection with their purchases of Amazon stock.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

The Complaint in the Action alleges that the above-captioned defendants (“Defendants”) defrauded investors in violation of the Exchange Act. Amazon investors, including Menora and Phoenix, incurred significant losses following the disclosure of the Company’s alleged fraud, which caused Amazon’s stock price to fall sharply, damaging Menora and Phoenix and other Amazon investors.

Pursuant to the PSLRA, the Court is to appoint as Lead Plaintiffs the movant or group of movants that possesses the largest financial interest in the outcome of the action and that satisfies the requirements of Federal Rule of Civil Procedure 23 (“Rule 23”). 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). In connection with their purchases of Amazon stock during the Class Period, Menora and Phoenix collectively incurred losses of approximately \$55,617,436. *See* Lieberman Decl., Exhibit (“Ex. A”). Accordingly, Menora and Phoenix believe that they have the largest financial interest in the relief sought in the Action.

Beyond their considerable financial interest, Menora and Phoenix also meet the applicable requirements of Rule 23 because their claims are typical of absent Class members and because they will fairly and adequately represent the interests of the Class. As sophisticated institutional investors with significant financial interests in the litigation, Menora and Phoenix are paradigmatic lead plaintiffs under the PSLRA, and their appointment would thus advance the legislative purpose of “increasing the role of institutional investors in class actions” in order to “benefit shareholders and assist courts by improving the quality of representation in securities class actions.” H.R. Conf. Rep. No. 104-369, at *34 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 733. For this reason, courts in this Circuit strongly prefer appointment of institutional investors to lead complex securities class actions. *See, e.g., Shenwick v. Twitter, Inc.*, No. 16-cv-05314-JST, 2016 U.S. Dist. LEXIS 177714, at *7 (N.D. Cal. Dec. 22, 2016) (“as an institutional investor, [movant] is likely to be an effective lead plaintiff”); *Feyko v. Yuhe Int’l Inc.*, No. CF 11-05511

DDP (PJWx), 2012 U.S. Dist. LEXIS 28040, at *8 (C.D. Cal. Mar. 2, 2012) (appointing institutional investor as lead plaintiff, finding it to be “exactly the type of sophisticated market participant[] Congress intended to take on the role of lead plaintiff following the PSLRA’s reforms.”) (quoting *In re Regions Morgan Keegan Closed-End Fund Litig.*, No. 07-02830, 2010 U.S. Dist. LEXIS 132902, at *8 (W.D. Tenn. Dec. 15, 2010)); *In re AudioEye, Inc.*, CV-15-163-TUC-DCB, 2015 U.S. Dist. LEXIS 193348, at *13 (D. Ariz. July 31, 2015) (appointing as lead plaintiff “an institutional investor, which is precisely the kind of investor that Congress sought to encourage to assume a more prominent role in securities litigation with the enactment of the PSLRA’s lead plaintiff provisions”).

To fulfill their obligations as Lead Plaintiffs and vigorously prosecute the Action on behalf of the Class, Menora and Phoenix have selected Pomerantz as Lead Counsel for the Class. Pomerantz is highly experienced in the area of securities litigation and class actions and has successfully prosecuted numerous securities litigations and securities fraud class actions on behalf of investors, as detailed in the firm’s resume. Menora and Phoenix have also selected Badgley Mullins, which has significant experience in complex and class action litigation, including matters concerning claimed violations of the federal securities laws, to serve as Liaison Counsel for the Class.

Accordingly, Menora and Phoenix respectfully request that the Court enter an order appointing Menora and Phoenix as Lead Plaintiffs for the Class and approving their selection of Pomerantz as Lead Counsel and Badgley Mullins as Liaison Counsel for the Class.

II. STATEMENT OF FACTS

As alleged in the Complaint in the Action, Amazon is a multinational technology company that engages primarily in the businesses of e-commerce, cloud computing, digital streaming, and artificial intelligence. *See* Dkt. No. 1 ¶ 2. The Company was founded in 1994 and is

1 headquartered in Seattle, Washington. *Id.* Amazon's common shares trade on the NASDAQ
2 under the ticker symbol "AMZN". *Id.*

3 On the Company's Amazon.com e-commerce platform, Amazon sells both third-party
4 merchandise and Amazon's own private-label products. *Id.* ¶ 3. As the owner and operator of
5 the Amazon.com e-commerce platform, Amazon has access to certain non-public data of the
6 third-party sellers that use the Amazon.com platform. *Id.*

7 On or around June 3, 2019, the U.S. House Committee on the Judiciary (the "House
8 Judiciary Committee") initiated a bipartisan investigation into the state of competition online. *Id.*
9 ¶ 4. The investigation, led by the Subcommittee on Antitrust, Commercial and Administrative
10 Law (the "Subcommittee"), examined the business practices and market dominance of Facebook,
11 Google, Apple, and, of particular relevance, Amazon (the "Subcommittee Investigation"). *Id.*

12 In the course of the Subcommittee Investigation, the Subcommittee held several oversight
13 hearings in which various officers of the above referenced companies, including their respective
14 Chief Executive Officers, offered witness testimony on topics such as the effect of market power
15 on the press, innovation, and privacy, and the market dominance of the firms under investigation.
16 *Id.* ¶ 5. After each of the hearings, members of the Subcommittee submitted questions for the
17 record to the witnesses. *Id.*

18 Throughout the Class Period, Defendants made materially false and misleading statements
19 regarding the Company's business, operations, and compliance policies. *Id.* ¶ 6. Specifically,
20 Defendants made false and/or misleading statements and/or failed to disclose that: (i) Amazon
21 engaged in anticompetitive conduct in its private-label business practices, including giving
22 Amazon products preference over those of its competitors and using third-party sellers' non-
23 public data to compete with them; (ii) the foregoing exposed Amazon to a heightened risk of
24 regulatory scrutiny and/or enforcement actions; (iii) Amazon's revenues derived from its private-
25 label business were in part the product of impermissible conduct and thus unsustainable; and (iv)
26

as a result, the Defendants’ public statements throughout the Class Period were materially false and/or misleading. *Id.*

On March 9, 2022, media outlets reported that the House Judiciary Committee had requested that the U.S. Department of Justice open a criminal investigation into Amazon and certain of its executives for allegedly lying to Congress about its business practices during the course of the Subcommittee Investigation. *Id.* ¶ 7.

In response, Amazon asserted that there was “no factual basis” for the House Judiciary Committee’s allegations. *Id.* ¶ 8.

Then, on April 6, 2022, *The Wall Street Journal* published an article entitled “SEC Is Investigating How Amazon Disclosed Business Practices.” *Id.* ¶ 9. The article reported, *inter alia*, that the SEC’s probe has been underway for more than a year and focuses on Amazon’s disclosures regarding its use of third-party seller data for its own private-label business. *Id.*

On this news, Amazon’s stock price fell \$105.98 per share, or 3.2%, to close at \$3,175.12 per share on April 6, 2022. *Id.* ¶ 10.

As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of Amazon’s stock, Plaintiffs in the Action and other Class members have suffered significant losses and damages.

III. ARGUMENT

A. MENORA AND PHOENIX SHOULD BE APPOINTED LEAD PLAINTIFFS

Menora and Phoenix should be appointed Lead Plaintiffs because, to their knowledge, they have the largest financial interest in the Action and otherwise satisfy the requirements of Rule 23. The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of the class action and to do so by the later of (i) 90 days after the date of publication, or (ii) as soon as practicable after the Court decides any pending motion to consolidate. *See* 15 U.S.C. § 78u-4(a)(3)(B)(i) & (ii).

Further, under 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I), the Court is directed to consider all motions by plaintiffs or purported class members to appoint lead plaintiff filed in response to any such notice. Specifically, the Court “shall” appoint the presumptively “most adequate plaintiff” to serve as lead plaintiff and shall presume that plaintiff is the person or group of persons, that:

(aa) has either filed the complaint or made a motion in response to a notice . . .;

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

As set forth below, Menora and Phoenix satisfy all three of these criteria and thus are entitled to the presumption that they are the most adequate plaintiffs of the Class and, therefore, should be appointed Lead Plaintiffs for the Class.

1. Menora and Phoenix Are Willing to Serve as Class Representatives

On May 6, 2022, counsel for plaintiff in the Action caused a notice to be published over *Globe Newswire* pursuant to Section 21D(a)(3)(A)(i) of the PSLRA (the “Notice”), which announced that a securities fraud class action had been filed against, *inter alia*, Amazon, and which advised investors in Amazon securities that they had until July 5, 2022 to file a motion to be appointed as lead plaintiff. *See* Lieberman Decl., Ex. B.

Menora and Phoenix have filed the instant motion pursuant to the Notice, and they have submitted signed Certifications attesting, *inter alia*, to their readiness to serve as representatives for the Class and to provide testimony at deposition and trial, if necessary. *See id.*, Ex. C. For the Menora entities, Deputy Chief Executive Officers (“CEOs”) Nir Moroz and Shai Kompel signed the Certifications, while Menachem (“Meni”) Neeman, Deputy CEO and Chief Legal Counsel of The Phoenix Group, and Haggai Schreiber, Executive Vice President and Chief Investment Manager of Phoenix Holdings Ltd. (“Phoenix Holdings”), signed the Certifications

on behalf of the Phoenix entities. *See id.* Accordingly, Menora and Phoenix satisfy the first requirement to serve as Lead Plaintiffs of the Class.

Menora and Phoenix are, in every respect, exactly the sort of well-managed, sophisticated institutional investors that Congress intended to fulfill the lead plaintiff role created by the PSLRA. The Menora entities are affiliates of Menora Mivtachim Holdings Ltd., a holdings company based in Ramat Gan, Israel. It is among Israel's largest insurance and finance groups, with more than \$70 billion in assets under management. Phoenix Insurance, the principal branch of Phoenix Holdings, is a leading Israeli insurance company, and provides insurance products and services including life insurance, long-term savings, pension, and provident funds, general insurance, and healthcare insurance. Phoenix Insurance has over \$10 billion in assets under management. Phoenix Pension, which is also wholly owned by Phoenix Holdings, has extensive experience in pension and provident fund management and manages over \$15 billion in assets for more than 800,000 customers.

2. Menora and Phoenix Have the Largest Financial Interest in the Relief Sought by the Class

The PSLRA requires a court to adopt a rebuttable presumption that "the most adequate plaintiff . . . is the person or group of persons that . . . in the determination of the court, has the largest financial interest in the relief sought by the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii). To the best of their knowledge, Menora and Phoenix have the largest financial interest of any Amazon investor or investor group seeking to serve as Lead Plaintiffs based on the four factors articulated in the seminal case *Lax v. First Merchants Acceptance Corp.*: (1) the number of shares purchased; (2) the number of net shares purchased (also referred to as "retained shares"); (3) the total net funds expended; and (4) the approximate losses suffered. Nos. 97 C 2715 *et al.*, 1997 U.S. Dist. LEXIS 11866, at *17-18 (N.D. Ill. Aug. 6, 1997). In accord with courts nationwide, these so-called *Lax* factors have been adopted by courts in the Ninth Circuit, including in this District. *See, e.g., Cook v. Atossa Genetics, Inc.*, No. C13- 1836 RSM, 2014 U.S. Dist. LEXIS

1 19218, at *8 (W.D. Wash. Feb. 14, 2014); *Reinschmidt v. Zillow, Inc.*, No. C12-2084 RSM, 2013
2 U.S. Dist. LEXIS 36793, at *5 (W.D. Wash. Mar. 14, 2013); *Knox v. Yingli Green Energy*
3 *Holding Co.*, 136 F. Supp. 3d 1159, 1163 (C.D. Cal. 2015); *Nicolow v. Hewlett Packard Co.*, Nos.
4 12-05980 CRB *et al.*, 2013 U.S. Dist. LEXIS 29876, at *18 (N.D. Cal. Mar. 4, 2013). Of the *Lax*
5 factors, courts in this Circuit tend to emphasize approximate loss in assessing a lead plaintiff
6 movant's financial interest within the meaning of the PSLRA. *See, e.g., Knox*, 135 F. Supp. 3d.
7 at 1163; *Nicolow*, 2013 U.S. Dist. LEXIS 29876, at *18-19.

8 During the Class Period, Menora and Phoenix collectively: (1) purchased 176,906 shares
9 of Amazon stock; (2) expended \$502,899,986 on their purchases of Amazon stock; (3) retained
10 151,796 shares of their shares of Amazon stock; and (4) as a result of the disclosures of the fraud,
11 suffered a loss of \$55,617,436 in connection with their purchases of Amazon stock. *See*
12 *Lieberman Decl.*, Ex. A. Because Menora and Phoenix possess the largest financial interest in
13 the outcome of this litigation, they may be presumed to be the "most adequate" plaintiffs. 15
14 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

15 **3. Menora and Phoenix Otherwise Satisfy Rule 23's Requirements**

16 Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to
17 possessing the largest financial interest in the outcome of the litigation, Lead Plaintiffs must
18 "otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure." Rule
19 23(a) generally provides that a class action may proceed if the following four requirements are
20 satisfied:
21

22 (1) the class is so numerous that joinder of all members is impracticable; (2) there are
23 questions of law or fact common to the class; (3) the claims or defenses of the
24 representative parties are typical of the claims or defenses of the class; and (4) the
25 representative parties will fairly and adequately protect the interests of the class.

26 Fed. R. Civ. P. 23(a).

27 "At the lead plaintiff stage of the litigation, in contrast to the class certification stage, a
28 proposed lead plaintiff need only make a preliminary showing that it will satisfy the typicality

1 and adequacy requirements of Rule 23.” *Cook*, 2014 U.S. Dist. LEXIS 19218, at *9-10 (quoting
2 *Sgalambo v. McKenzie*, 268 F.R.D. 170, 173 (S.D.N.Y. 2010)); *see also In re Cavanaugh*, 306
3 F.3d 726, 729-30 (9th Cir. 2002).

4 “The test of typicality ‘is whether other members have the same or similar injury, whether
5 the action is based on conduct which is not unique to the named plaintiffs, and whether other class
6 members have been injured by the same course of conduct.” *Richardson v. TVIA, Inc.*, Nos. C-
7 06-06304 RMW, C-06-07307 RMW, 2007 U.S. Dist. LEXIS 28406, at *16 (N.D. Cal. Apr. 16,
8 2007) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

9 The claims of Menora and Phoenix are typical of those of the Class. Menora and Phoenix
10 allege, as do all Class members, that Defendants violated the Exchange Act by making what they
11 knew or should have known were false or misleading statements of material facts concerning
12 Amazon, or by omitting to state material facts necessary to make the statements they did make
13 not misleading. Menora and Phoenix, as did all Class members, purchased Amazon stock during
14 the Class Period at prices artificially inflated by Defendants’ misrepresentations or omissions and
15 were damaged upon the disclosure of those misrepresentations and/or omissions. These shared
16 claims, which are based on the same legal theory and arise from the same events and course of
17 conduct as the Class’s claims, satisfy the typicality requirement of Rule 23(a)(3).
18

19 In determining whether the adequacy of representation requirement of Rule 23(a)(4) is
20 met, courts in the Ninth Circuit consider whether “the representative plaintiffs and their counsel
21 have any conflicts of interest with other class members” and ask “will the representative plaintiffs
22 and their counsel prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*,
23 327 F.3d 938, 957 (9th Cir. 2003) (citations omitted).

24 Menora and Phoenix are adequate representatives for the Class. Here, Menora and
25 Phoenix have submitted signed Certifications declaring their commitment to protecting the
26 interests of the Class. *See Lieberman Decl., Ex. C.* There is no antagonism between the interests
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1 of Menora and Phoenix and those of the Class, and Menora and Phoenix's significant financial
2 interest demonstrates that they have a sufficient interest in the outcome of this litigation that gives
3 them an incentive to vigorously prosecute fraud claims on behalf of the Class. Moreover, Menora
4 and Phoenix have retained counsel highly experienced in vigorously and efficiently prosecuting
5 securities class actions such as this Action, and submit their choices of Pomerantz and Badgley
6 Mullins to the Court for approval as Lead Counsel and Liaison Counsel for the Class, respectively,
7 pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

8 Menora and Phoenix are sophisticated institutional investors with significant assets under
9 management **and** with significant experience serving as lead plaintiffs in prior PSLRA actions
10 (as discussed *infra* at pp. 12-13). As such, their appointment would be consistent with the
11 PSLRA's preference for the appointment of institutional investors as class representatives in
12 securities class actions. *See* H.R. Conf. Rep. No. 104-369, at 34 ("increasing the role of
13 institutional investors in class actions will ultimately benefit shareholders and assist courts by
14 improving the quality of representation in securities class actions"). Indeed, courts in this Circuit
15 strongly prefer appointment of institutional investors to lead complex securities class actions.
16 *See, e.g., Twitter*, 2016 U.S. Dist. LEXIS 177714, at *7 ("as an institutional investor, [movant] is
17 likely to be an effective lead plaintiff"); *Yuhe Int'l*, 2012 U.S. Dist. LEXIS 28040, at *8
18 (appointing institutional investor as lead plaintiff, finding it to be "exactly the type of
19 sophisticated market participant[] Congress intended to take on the role of lead plaintiff following
20 the PSLRA's reforms.") (quoting *Regions Morgan Keegan*, 2010 U.S. Dist. LEXIS 132902, at
21 *8); *AudioEye*, 2015 U.S. Dist. LEXIS 193348, at *13 (appointing as lead plaintiff "an
22 institutional investor, which is precisely the kind of investor that Congress sought to encourage
23 to assume a more prominent role in securities litigation with the enactment of the PSLRA's lead
24 plaintiff provisions").
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1 Consisting of likeminded institutional investors, Menora and Phoenix constitute an
2 appropriate group of the type expressly permitted by the PSLRA and routinely appointed to serve
3 as lead plaintiffs in PSLRA actions. In *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800, 1807 n.3
4 (2018), the Supreme Court affirmed the propriety of appointing such groups as lead plaintiff,
5 finding that “[d]istrict courts often permit aggregation of plaintiffs into plaintiff groups”. More
6 recently, in *Mersho v. United States Dist. Court*, 6 F.4th 891, 899 (9th Cir. 2021), the Ninth
7 Circuit Court of Appeals likewise held that “the [PSLRA] expressly allows a ‘group of persons’
8 to move for appointment” as Lead Plaintiff. See also *Miami Police Relief & Pension Fund v.*
9 *Fusion-io, Inc.*, Nos. 13-CV-05368-LHK *et al.*, 2014 U.S. Dist. LEXIS 80141, at *20 (N.D. Cal.
10 June 10, 2014) (“Small, cohesive groups . . . are routinely appointed as lead plaintiff in securities
11 actions when they have shown their ability to manage the litigation effective in the interests of
12 the class without undue influence of counsel.”).

13 Here, demonstrating their fitness to serve jointly as Lead Plaintiffs as well as their
14 adequacy more generally, Menora and Phoenix have submitted a Joint Declaration attesting to,
15 *inter alia*, their backgrounds, their experience serving as Lead Plaintiffs in prior PSLRA actions
16 (both jointly and separately), their understanding of the responsibilities of a lead plaintiff pursuant
17 to the PSLRA, their decision to seek appointment jointly as Lead Plaintiffs, and the steps that
18 they are prepared to take to cooperatively prosecute this litigation on behalf of the Class. See
19 generally Lieberman Decl., Ex. D. Courts routinely appoint investor groups as lead plaintiffs
20 under such circumstances. See, e.g., *Xu v. FibroGen, Inc.*, No. 21-cv-02623-EMC, 2021 U.S.
21 Dist. LEXIS 164034, at *23-24 (N.D. Cal. Aug. 30, 2021) (appointing group of sophisticated
22 institutional investors as Lead Plaintiffs, considering *inter alia* group’s submission of detailed
23 Joint Declaration in assessing adequacy); *McCracken v. Edwards Lifesciences Corp.*, Nos. 8:13-
24 CV-1463-JLS (RNBx) *et al.*, 2014 U.S. Dist. LEXIS 2147, at *12-13 (C.D. Cal. Jan. 8, 2014)
25 (same).
26
27
28

1 Here, Menora and Phoenix have a pre-existing relationship in addition to both being
2 sophisticated institutional investors. Indeed, both Menora entities, Phoenix Insurance, and
3 Pomerantz have already demonstrated their commitment and ability to work together to protect
4 the interests of investors together by serving as Co-Lead Plaintiffs and Lead Counsel,
5 respectively, in the PSLRA action *In re Mylan N.V. Securities Litigation*, No. 1:16-cv-07926
6 (S.D.N.Y.) (“*Mylan*”), in which the court entered an order certifying the class and appointing
7 Menora and Phoenix as class representatives, and *Plumbers and Steamfitters Local 60 Pension*
8 *Trust v. Meta Platforms, Inc. et al*, No. 4:22-cv-01470 (N.D. Cal.) (“*Meta Platforms*”).
9 Separately, the Menora entities² served as Lead Plaintiffs in *In re Comverse Technology, Inc.*
10 *Securities Litigation*, 1:06-cv-01825 (E.D.N.Y.) (“*Comverse*”), in which they secured a
11 substantial \$225 million settlement in an action arising out of an alleged options backdating
12 scheme, and are also currently serving as Co-Lead Plaintiffs in the PSLRA action *Jansen v.*
13 *International Flavors & Fragrances Inc. et al.*, No. 1:19-cv-07536 (S.D.N.Y.) (“*International*
14 *Flavors*”). Phoenix Insurance recently served as Lead Plaintiff in the PSLRA Action *Costas v.*
15 *Ormat Technologies, Inc.*, 3:18-cv-00271 (D. Nev.) (“*Ormat*”), in which Phoenix Insurance
16 secured a \$3.75 million settlement for the class. Phoenix Insurance and Phoenix Pension are both
17 currently serving as Co-Lead Plaintiffs in the PSLRA action *Burbige v. ATI Physical Therapy,*
18 *Inc.*, 1:21-cv-04349 (N.D. Ill.) (“*ATI*”). Through their prosecution of these actions, Menora and
19 Phoenix have developed considerable experience and appreciation for a Lead Plaintiff’s
20 responsibilities under the PSLRA. *See generally* Lieberman Decl., Ex. D. In addition, through
21 their shared experience as Co-Lead Plaintiffs in *Mylan* and *Meta Platforms*, Menora’s and
22 Phoenix’s representatives have established relationships with one another that will help facilitate
23 their collaborative prosecution of this action together. *Id.*
24

25
26 ² At the time of the *Comverse* action, the Menora entities were named Menora Insurance Co., Ltd.
27 and Mivtachim Pension Funds Ltd., respectively. These are the same corporate entities as the
28 current movants.

1 As more fully attested to in their Joint Declaration, Menora and Phoenix believe that the
2 securities class action against Amazon is meritorious and should be led by dedicated and
3 sophisticated institutional investors that are committed to maximizing the recovery on behalf of
4 the Class. *Id.* Menora and Phoenix recognize that they are like-minded institutional investors
5 that suffered substantial losses in their investments in Amazon securities, which is why Menora
6 and Phoenix decided to seek joint appointment as Lead Plaintiffs in the action. *Id.* Additionally,
7 Menora and Phoenix's decision to jointly move for appointment as Lead Plaintiffs was informed
8 by their prior experience in securities litigation matters, such as their highly relevant experience
9 serving together as part of a lead plaintiff group under the PSLRA in the *Mylan* and *Meta*
10 *Platforms* litigations, the Menora entities' experience serving as Co-Lead Plaintiffs in the
11 *Comverse* and *International Flavors* litigations, the Phoenix entities serving as Co-Lead Plaintiffs
12 in the *ATI* litigation, and Phoenix Insurance's experience serving as Lead Plaintiff in the *Ormat*
13 litigation. Based on these experiences, Menora and Phoenix believe that such partnerships can
14 benefit investors, and they have developed considerable experience and appreciation for a Lead
15 Plaintiff's responsibilities under the PSLRA. *Id.* By working together, Menora and Phoenix
16 recognize that they provide broad, diverse representation to the members of the Class. *Id.*

17 As part of Menora and Phoenix's efforts to formalize the leadership of this action and to
18 demonstrate their commitment to jointly prosecuting the action, their representatives participated
19 in a conference call to discuss, among other things: the strength of the claims against Defendants;
20 a strategy for prosecuting these actions; the benefits that the Class would receive from the
21 leadership of a coordinated group of institutional investors with prior experience serving as Lead
22 Plaintiff under the PSLRA; the shared desire of Menora and Phoenix to achieve the best possible
23 result for the Class; the interests in prosecuting the case in a collaborative, likeminded manner;
24 and the actions each fund will take to continue to ensure that the Class's claims will be zealously
25 and efficiently litigated. *Id.*

1 **4. Menora and Phoenix Will Fairly and Adequately Represent the**
2 **Interests of the Class and Are Not Subject to Unique Defenses**

3 The presumption in favor of appointing Menora and Phoenix as Lead Plaintiffs may be
4 rebutted only upon proof “by a member of the purported plaintiff class” that the presumptively
5 most adequate plaintiff:

6 (aa) will not fairly and adequately protect the interest of the class; or

7 (bb) is subject to unique defenses that render such plaintiff incapable of adequately
8 representing the class.

9 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

10 The ability and desire of Menora and Phoenix to fairly and adequately represent the Class
11 has been discussed above. Menora and Phoenix are not aware of any unique defenses Defendants
12 could raise that would render them inadequate to represent the Class.

13 **B. LEAD PLAINTIFFS’ SELECTION OF COUNSEL SHOULD BE**
14 **APPROVED**

15 The PSLRA vests authority in Lead Plaintiffs to select and retain lead counsel, subject to
16 the approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v); *Cook*, 2014 U.S. Dist. LEXIS
17 19218, at *11-12; *Osher v. Guess?, Inc.*, No. CV 01-00871 LGB (RNBx), 2001 U.S. Dist. LEXIS
18 6057, at *15 (C.D. Cal. Apr. 26, 2001). The Court should not interfere with Lead Plaintiffs’
19 selection unless it is necessary to do so to “protect the interests of the class.” 15 U.S.C. § 78u-
20 4(a)(3)(B)(iii)(II)(aa); *Cook*, 2014 U.S. Dist. LEXIS 19218, at *11.

21 Menora and Phoenix have selected Pomerantz to serve as Lead Counsel for the Class.
22 Pomerantz is a premier firm, highly experienced in the areas of securities litigation and class
23 action lawsuits, which has successfully prosecuted numerous such actions on behalf of investors
24 over its 80+ year history, as detailed in its firm resume. *See* Lieberman Decl., Ex. E. Pomerantz
25 recently secured a recovery of \$3 billion on behalf of investors in the securities of Petróleo
26 Brasileiro S.A. — Petrobras, the largest class action settlement in a decade and the largest
27 settlement ever in a class action involving a foreign issuer. *See id.* Petrobras is part of a long line

1 of record-setting recoveries led by Pomerantz, including the \$225 million settlement in *In re*
2 *Comverse Technology, Inc. Securities Litigation*, No. 06-CV-1825 (E.D.N.Y.), in June 2010. *Id.*
3 Most recently, Pomerantz announced as Lead Counsel on behalf of a class of Fiat Chrysler
4 Automobiles N.V. investors that it has reached a \$110 million settlement with the company. *See*
5 *id.* Additionally, proposed Liaison Counsel Badgley Mullins has significant experience in
6 complex and class action litigation, including matters concerning claimed violations of the federal
7 securities laws. *See id.*, Ex. F. As a result of their extensive experience in similar litigation,
8 Menora and Phoenix's choices of counsel have the skill, knowledge, expertise, and experience
9 that will enable them to prosecute the Action effectively and expeditiously. Thus, the Court may
10 be assured that by approving the selection of counsel by Menora and Phoenix, with Pomerantz as
11 Lead Counsel and Badgley Mullins as Liaison Counsel, the members of the Class will receive the
12 best legal representation available.

13 IV. CONCLUSION

14 For the foregoing reasons, Menora and Phoenix respectfully request that the Court issue
15 an Order: (1) appointing Menora and Phoenix as Lead Plaintiffs for the Class; and (2) approving
16 their selection of Pomerantz as Lead Counsel and Badgley Mullins as Liaison Counsel for the
17 Class.
18

19 **Dated:** July 5, 2022

Respectfully submitted,

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s/ Duncan C. Turner

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26 *The Phoenix Insurance Company, Ltd., and The*
27 *Phoenix Provident Pension Fund Ltd. and*
28 *Proposed Lead Counsel for the Class*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 5th day of July, 2022, I electronically filed the foregoing with
3 the Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 all counsel of record.
5

6 s/ Yonten Dorjee

7 Yonten Dorjee, Paralegal

8 **BADGLEY MULLINS TURNER PLLC**

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